IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 4708 of 1995

Between:

M/s. Aryan Caps Pvt. Ltd., Rep. M.D.- Sri T.Anjaiah.
Subash Road, Secunderabad.

..... PETITIONER

AND

1 The Deputy Commercial Tax Officer,
Mahankali Street Circle, Secunderabad.
2 The Commercial Tax Officer,
Mahankali Street Circle, Secunderabad.
3 Commissioner of Commercial Taxes ,
Govt. of A.P., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ or direction declaring the action of the respondents in issuing the distrained order dated 28/02/1995 without passing any order what so ever as illegal, arbitrary, and without jurisdiction and consequently declare the notices issued under the Revenue Recovery Act are also illegal and set aside the same.

Counsel for the Petitioner:MR.P.VENUGOPAL

Counsel for the Respondent No.: GP FOR COMMERCIAL TAXES

The Court made the following O R D E R:

(Per the Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties.

The distraint order was challenged by this writ petition in the year 1995. Two grounds were agitated. One was that the petitioner was entitled to deferment of tax in terms of G.O.Ms.No.375 Industries & Commerce Department, dated 23-08-1985. Second ground was that without an assessment, the distraint order was passed. Counter has been filed, as early as, in March, 1995, in which it is stated that notice had been given on 15-02-1991, which was served on the petitioner on 11-09-1991, but he did not appear and registered notices were sent to his postal address, but were returned unserved, therefore, a final assessment order was passed on 23-11-1993. This could not be served on the petitioner, because no person was available at the address given by him to take the notice, therefore, the notice was affixed.

Since the assessment order had been made and in pursuance of the assessment order, distraint notices were issued, this Court would not be in a position to interfere with the distraint order, unless there was any challenge to the assessment order. Assessment was not challenged at all. Even otherwise, assessment could have been challenged by way of an appeal before the appropriate authority. When this Court entertained the writ petition on 14-04-1995, it appears that this Court granted stay in view of the fact that the petitioner had enjoyed the benefit of deferment under G.O.Ms.No.375. We have gone through the order. That deferment was only for a period of five years and Industries and Commerce Department had issued a certificate on 23rd August, 1985. That period also is over by now, therefore, we do not see any merit in this writ petition, which is accordingly dismissed. No order as to costs.

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(BILAL NAZKI, J)

31st August, 2004.

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(S.ANANDA REDDY, J)

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To

1 The Deputy Commercial Tax Officer,
Mahankali Street Circle, Secunderabad.
2 The Commercial Tax Officer,
Mahankali Street Circle, Secunderabad.
3 Commissioner of Commercial Taxes ,
Govt. of A.P., Hyderabad

4 Two C.Cs to the Government Pleader for Commercial Taxes,

High Court Buildings, A.P., Hyderabad (OUT)

5 Two C.D copies